

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs February 14, 2006

STATE OF TENNESSEE v. MARCUS E. ROBINSON

Appeal from the Circuit Court for Montgomery County
No. 40200545 Michael R. Jones, Judge

No. M2005-00670-CCA-R3-CD - Filed April 5, 2006

The Defendant, Marcus Robinson, pled guilty to two counts of especially aggravated robbery but subsequently filed a motion to withdraw his pleas, which was denied by the trial court. At a separate plea hearing, the Defendant pled guilty to two counts of attempted first degree murder. Following a sentencing hearing, the Defendant's two especially aggravated robbery convictions were merged, and he was sentenced to twenty-four years and six months for the especially aggravated robbery conviction. He received a fifteen-year sentence for each attempted murder conviction. In addition, the Defendant was found to have violated the terms of a nine-year community corrections sentence and that sentence was ordered to be served in confinement. The two fifteen-year sentences were ordered to be served concurrently with each other, but consecutively to the twenty-four years and six-month sentence. These sentences were also ordered to be served consecutively to the nine-year sentence, for an effective sentence of forty-eight and one-half years in the Department of Correction. On appeal, the Defendant raises three issues; that the trial court erred in: (1) denying his motion to withdraw his guilty pleas for especially aggravated robbery, (2) imposing consecutive sentences, and (3) imposing an excessive sentence for his especially aggravated robbery conviction. We affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which THOMAS T. WOODALL and JOHN EVERETT WILLIAMS, JJ., joined.

Edward E. Dewerff, Clarksville, Tennessee, for the appellant, Marcus E. Robinson

Paul G. Summers, Attorney General and Reporter; Sophia S. Lee, Assistant Attorney General; John Carney, District Attorney General; and Helen Young, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

The issues raised in this appeal stem from a June 17, 2002 incident in which the Defendant robbed a pawn shop in Clarksville and repeatedly stabbed two of the shop's employees with a knife, seriously wounding both. In September of 2002, a Montgomery County grand jury indicted the Defendant for two counts of Class A felony especially aggravated robbery, see Tenn. Code Ann. § 39-13-403, and two counts of Class A felony attempted first degree murder, see id. at § 39-13-202.

In February of 2003, the Defendant entered open pleas of guilty to both counts of especially aggravated robbery and indicated he wished to proceed to trial on the attempted murder charges. At this first guilty plea hearing, the Defendant was thoroughly advised of the rights he was waiving by submitting guilty pleas. He was also advised that he faced a sentence between fifteen and fifty years. The Defendant acknowledged that he understood the consequence of his pleas. The prosecutor summarized the facts of the case against the Defendant as follows. On the evening of June 17, 2002, the Defendant entered the St. Bethlehem Pawn Shop in Clarksville and stated he was waiting for a friend. The Defendant made no attempt to hide his identity, and one of the store clerks would testify she had seen the Defendant in the store on a prior occasion. The two clerks began to close the shop for the day; one clerk, Ms. Jessica Givens, proceeded to the back of the store to lock up some jewelry while the other clerk, Ms. Sandra Marrero, remained in the front. Ms. Marrero was on the phone with her husband when she "suddenly felt sharp pains in her back, turned around to find the Defendant swinging a knife at her." Ms. Marrero would testify that she saw that her attacker's knife had a red bandana tied around it. The Defendant repeatedly stabbed Ms. Marrero, and she fell to the floor screaming. Ms. Givens, hearing the screams, rushed to the front of the store, but as she did the Defendant chased after her and subsequently stabbed her multiple times.

The prosecutor stated that the evidence would show that Ms. Givens' injuries included: a cut on her right shoulder; a cut on her right elbow; two cuts on her hand; the "tip of the middle finger almost cut off"; and a stab wound to the back of her neck. Ms. Marrero's injuries included: four stab wounds to her back "one of which punctured the lung"; a cut along her jaw line; a cut on her hand "to the bone"; and a wound in her leg. Both victims were initially transported to a local hospital and then to Vanderbilt Hospital in Nashville. Ms. Marrero was in Critical Care for four days.

The prosecutor further stated that the evidence would show that a 911 call was received at 5:55 p.m., and witnesses at an IGA store across the street from the pawn shop would testify that they observed the Defendant leaving the pawn shop. The police arrived at the crime scene within minutes of the 911 call, and based on the victim's descriptions of the Defendant, his clothes, and the car he drove away in, a BOLO (Be On the Look Out) was issued. Approximately fifteen minutes after the BOLO was issued the Defendant was detained, identified by the witnesses from the IGA store and arrested. A search conducted incident to the arrest led to the discovery of a "large sum of money" which fell from the Defendant's pant leg and was covered in what appeared to be blood. The only property stolen during the robbery was cash from the store register totaling less than \$500.

The Defendant was “Mirandized” and offered a statement to the police in which he recounted that he went into the pawn shop to look for speakers and “the next thing he remembered, was being very hot, just feeling very hot and then he stated that he remembered wrestling with the woman in the pawn shop and seeing a knife and blood and running out.” The Defendant then went to a gas station and cleaned up, picked up his girlfriend and her children, and shortly thereafter was stopped and arrested by the police. The police drove the route the Defendant stated he took and found “the knife still wrapped in the red bandana.” The Defendant’s girlfriend would testify that this knife was “identical” to one missing from her house and would also state that the red bandana was “similar” to one that she had at her house.

Additionally, the State submitted that it was prepared to produce DNA analysis results which would show that the blood on the knife and bandana belonged to Ms. Marrero, and blood found on the Defendant’s shoes belonged to the “victim.”¹ Further scientific testing and analysis revealed that fingerprints found on the knife and bandana belonged to the Defendant.

The Defendant acknowledged at his plea hearing that he wished to proceed with his guilty pleas based on the facts as stated by the prosecution and further acknowledged that he understood all of the rights he was forfeiting by entering guilty pleas. When asked if he had sufficient time to consider his decision the Defendant replied, “Yes, sir.” The Defendant pled guilty to two counts of especially aggravated robbery, and the trial court accepted his pleas.

Less than a month later, in March of 2003, the Defendant filed a pro se motion to withdraw his guilty pleas alleging ineffective assistance of counsel, and several days later filed a motion for the court to appoint new counsel. In December of 2003, the Defendant’s second attorney filed an amended motion to withdraw guilty pleas, asserting the Defendant “felt he was forced to plead guilty.” In January of 2004, an evidentiary hearing was conducted on the Defendant’s motion to withdraw guilty pleas.

At this hearing, the Defendant’s counsel first noted for the record that the Defendant was proceeding with his motion to withdraw guilty pleas “against [counsel’s] advice.” The Defendant then testified that the basis of his motion was: “I believe I was misrepresented and -- when given the pleas, and that all the options wasn’t (sic) explored before the plea was entered and I was pretty much forced to plea.” The Defendant further testified that he was not told he was going to plead guilty until the morning of the plea date, and that it was not his decision to enter guilty pleas. On cross-examination, the Defendant elaborated on his claims, stating that his trial counsel lied to him and his mother,² “didn’t represent [the Defendant] to the fullest of his ability,” and did not explore

¹The record does not specify which of the two victim’s blood was found on the Defendant’s shoe.

²While not articulately explained, it seems the basis for the Defendant’s allegation that his counsel “lied” to him and his mother was that counsel allegedly told the Defendant the plea agreement ultimately accepted was his best option, and then told the Defendant’s mother that there were other courses of action that could be taken, such as negotiating for a better plea.

the possible defense that the Defendant was on drugs the day of the crime. When asked why he pled guilty, the Defendant responded: “Because [trial counsel] told me to.”

The trial court denied the Defendant’s motion to withdraw his guilty pleas, noting that the Defendant’s pleas were entered knowingly, understandingly and voluntarily. The court agreed that the facts of the case were, as the Defendant’s trial counsel acknowledged at the plea hearing, “overwhelming.” The court further found that the Defendant “failed to establish ineffective assistance of counsel; he has shown nothing to establish that [trial counsel’s] advice was not within the range of competence demanded of attorneys in criminal cases.” The court concluded: “No one forced [the Defendant] to enter the pleas; he did so on the advice of his counsel. Now he has changed his mind.” Accordingly, the court found the Defendant “failed to meet his minimum burden of presenting evidence to establish that any fair and just reason exists for granting the withdrawal of his guilty pleas.” The court therefore denied the Defendant’s motion to withdraw his pleas. A notice of appeal was timely filed. At a second guilty plea hearing in January of 2005, the Defendant entered pleas of guilty to both charges of attempted first degree murder.³

A sentencing hearing was conducted in March of 2005. As a preliminary matter, the Defendant’s motion for a merger of his two especially aggravated robbery convictions was granted. The Defendant testified that he was on drugs and had made mistakes. He also admitted he violated the terms of his community corrections by committing the crimes at issue in this case while in the alternative sentencing program. The Defendant was sentenced to twenty-four years and six months for his especially aggravated robbery conviction. Pursuant to the plea agreement, the attempted murder sentences were set at fifteen years. As to manner of service, the court ordered the two attempted murder conviction sentences be served concurrently but ran the Defendant’s nine-year sentence for his community corrections violation, the twenty-four-and-a-half-year robbery conviction sentence and the fifteen-year attempted murder sentence consecutive to one another for a total sentence of forty-eight years and six months. This appeal followed.

ANALYSIS

On appeal, the Defendant claims that the trial court erred in denying his motion to withdraw his guilty pleas on the two charges of especially aggravated robbery and asks this Court to grant him such relief. The Defendant also raises two sentencing issues, arguing that the trial court erred in ordering his especially aggravated robbery and attempted murder sentences be served consecutively, and erred in enhancing the Defendant’s especially aggravated robbery sentence.

I. Motion To Withdraw Guilty Pleas

In his first issue on appeal, the Defendant argues that the trial court erred in denying his motion to withdraw his guilty pleas. To support this claim, the Defendant argues that his trial counsel did not “explain all the options available,” and therefore, because of the ineffective assistance he received from his counsel, he was “pretty much forced to plead.” In short, the

³On appeal, the Defendant does not challenge his pleas of guilty to the two attempted first degree murder charges, or these convictions, nor the length of the sentences he received for the attempted murder convictions.

Defendant argues that because he received ineffective assistance of counsel his guilty pleas were entered unknowingly and involuntarily. Thus, the Defendant argues, he has shown a fair and just reason for withdrawing his guilty pleas.

Our supreme court has recently explained the standard for reviewing a trial court's denial of a motion to withdraw a guilty plea as follows:

A defendant does not have a unilateral right to withdraw a plea. Whether a defendant should be permitted to withdraw a plea is a matter addressed to the sound discretion of the trial court, regardless of when the motion is filed. The trial judge "should always exercise his discretion with caution in refusing to set aside a plea of guilty, to the end that one accused of crime may have a fair and impartial trial." "[W]hen a constitutional violation is shown, the trial court's discretion is strictly curtailed." The trial court's decision "will not be reversed unless it clearly appears that there was an abuse of discretion." An abuse of discretion exists if the record lacks substantial evidence to support the trial court's conclusion.

State v. Crowe, 168 S.W.3d 731, 740 (Tenn. 2005) (internal citations omitted).

The withdrawal of a guilty plea is governed by Tennessee Rule of Criminal Procedure 32(f):

A motion to withdraw a plea of guilty may be made upon a showing by the defendant of any fair and just reason only before sentence is imposed; but to correct manifest injustice, the court after sentence, but before the judgment becomes final, may set aside the judgment of conviction and permit the defendant to withdraw the plea.

Tenn. R. Crim. P. 32(f). Where a petition to withdraw a guilty plea is filed prior to sentencing, as in this case, the standard the defendant must meet is the less stringent "any fair and just reason." Id. What constitutes a showing of "any fair and just reason" has not been specifically set out in the Tennessee Rules of Criminal Procedure. However, this Court has previously listed five factors, first set out by the United States Court of Appeals for the Sixth Circuit, which are useful in determining whether a defendant has "any fair and just reason" for withdrawing a plea:

1. The length of time between the entry of the guilty plea and the filing of the motion to withdraw it;
2. Why the grounds for withdrawal were not presented to the court at an earlier point in the proceedings;
3. Whether the defendant has asserted and maintained his innocence;
4. The circumstances underlying the entry of the plea of guilty, the nature and background of the defendant, and whether the defendant has admitted guilt;
5. Once the defendant has established a fair and just reason, whether the prosecution will be prejudiced should the plea be withdrawn.

State v. Patrick Maxwell, No. E1999-00124-CCA-R3-CD, 2000 WL 1606582, at *8-9 (Tenn. Crim. App., Knoxville, Oct. 27, 2000) (citing United States v. Spencer, 836 F.2d 236, 239-40 (6th Cir. 1991)). See also State v. Arthur Southern, No. M2003-02150-CCA-R3-CD, 2004 WL 2659056, at *5 (Tenn. Crim. App., Nashville, Nov. 22, 2004) (citing Maxwell, 2000 WL 1606582, at *8); State v. Antonio Demonte Lyons, No. 01C01-9508-CR-00263, 1997 WL 469501, at *12 (Tenn. Crim. App., Nashville, Aug. 15, 1997) (citing United States v. Alexander, 948 F.2d 1002, 1003 (6th Cir.1991)). Furthermore, it has long been held that a guilty plea will not be set aside simply because the defendant experiences a change of heart. See Ray v. State, 451 S.W.2d 854, 856 (Tenn. 1970).

In this case, after considering the facts and the applicable law, we conclude that the Defendant has not shown that the trial judge abused his discretion. The Defendant argues that he should have been allowed to withdraw his guilty pleas because he was “forced” into submitting them, i.e., his pleas were not voluntarily entered. However, the transcript from the guilty plea hearing confirms that the trial court thoroughly and methodically explained the nature of the charges the Defendant faced as well as the consequences of entering a plea of guilty. The Defendant subsequently testified that he had ample time to consider his options and desired to plead guilty. The trial court found the Defendant entered his pleas voluntarily at the guilty plea hearing, and again at the evidentiary hearing on the motion to withdraw. The Defendant did not meet his burden of proving his pleas should be withdrawn because they were involuntary.

Moreover, an examination of the five factors applicable to the Defendant’s case reveals that the evidence weighs against a finding of “any fair and just reason” for allowing a withdrawal of the guilty pleas. The Defendant was afforded the option of raising his concerns to the court earlier in the proceedings, at the plea hearing itself, but failed to do so. Additionally, the Defendant did not assert and maintain his innocence throughout the proceedings. To the contrary, the Defendant admitted remembering wrestling with a clerk, the use of a knife and the presence of blood. The circumstances underlying the entry of the plea and the nature and background of the Defendant also weigh against granting his motion to withdraw pleas. The Defendant was aware that his trial was to be rescheduled for a later date and therefore he was under no pressure to enter a plea on the day he chose to plead guilty. Furthermore, the evidence against the Defendant has been accurately described as overwhelming, and he faced the possibility of a longer sentence had he been convicted by a jury.⁴ As to the Defendant’s background, his extensive criminal record reveals he had experience with the criminal court system. Moreover, because the Defendant has failed to provide “any fair and just reason” why his pleas should be withdrawn, the fifth factor, of whether the prosecution would be prejudiced if the plea were withdrawn, is irrelevant in this case.⁵ See Maxwell, 2000 WL 1606582, at *9.

⁴We note that the trial court stated during the sentencing hearing that he considered the fact that the Defendant pled guilty a mitigating factor.

⁵We find the first factor, the length of time between the plea and the motion to withdraw, to be of no consequence in this case as it was neither a particularly long nor short time.

Under these circumstances, the record does not establish that the Defendant entered his guilty pleas involuntarily. We find that the Defendant failed to prove “any fair and just reason” for withdrawing his pleas in this case. Accordingly, we conclude the trial court did not abuse its discretion by denying the Defendant’s motion to withdraw his guilty pleas to the charges of especially aggravated robbery. This issue is without merit.

II. Sentencing

The Defendant also raises two sentencing issues on appeal. First, he claims that the trial court erred in ordering his sentences to be served consecutively, arguing the court failed to follow the requirements of State v. Woods, 814 S.W.2d 378 (Tenn. Crim. App. 1991). Second, the Defendant claims that the trial court imposed an excessive sentence for his especially aggravated robbery conviction, arguing that the court improperly enhanced his sentence based on factors not set forth in the sentencing code.

Before a trial court imposes a sentence upon a convicted criminal defendant, it must consider (a) the evidence adduced at the trial and the sentencing hearing; (b) the presentence report; (c) the principles of sentencing and arguments as to sentencing alternatives; (d) the nature and characteristics of the criminal conduct involved; (e) evidence and information offered by the parties on the enhancement and mitigating factors set forth in Tennessee Code Annotated sections 40-35-113 and 40-35-114; and (f) any statement the defendant wishes to make in the defendant’s own behalf about sentencing. See Tenn. Code Ann. § 40-35-210(b); State v. Imfeld, 70 S.W.3d 698, 704 (Tenn. 2002). To facilitate appellate review, the trial court is required to place on the record its reasons for imposing the specific sentence, including the identification of the mitigating and enhancement factors found, the specific facts supporting each enhancement factor found, and the method by which the mitigating and enhancement factors have been evaluated and balanced in determining the sentence. See State v. Samuels, 44 S.W.3d 489, 492 (Tenn. 2001).

Upon a challenge to the sentence imposed, this court has a duty to conduct a de novo review of the sentence with a presumption that the determinations made by the trial court are correct. See Tenn. Code Ann. § 40-35-401(d). However, this presumption “is conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances.” State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991). If our review reflects that the trial court followed the statutory sentencing procedure, that the court imposed a lawful sentence after having given due consideration and proper weight to the factors and principles set out under the sentencing law, and that the trial court’s findings of fact are adequately supported by the record, then the presumption is applicable, and we may not modify the sentence even if we would have preferred a different result. See State v. Fletcher, 805 S. W. 2d 785, 789 (Tenn. Crim. App. 1991). We will uphold the sentence imposed by the trial court if (1) the sentence complies with the purposes and principles of the 1989 Sentencing Act, and (2) the trial court’s findings are adequately supported by the record. See State v. Arnett, 49 S.W.3d 250, 257 (Tenn. 2001). The burden of showing that

a sentence is improper is upon the appealing party. See Tenn. Code Ann. § 40-35-401, Sentencing Commission Comments; Arnett, 49 S.W.3d at 257.⁶

A. Consecutive Sentencing

The Defendant asserts that the trial court erred in imposing consecutive sentences because it erroneously found him to be a “dangerous offender.” To support this claim the Defendant argues that before a trial court can find a defendant to be a “dangerous offender” and run sentences consecutively, the court “must find” each of the four factors outlined in the 1991 Woods case, and this court found only one.⁷ The Defendant’s argument fails because, 1) the trial court properly concluded the Defendant was a dangerous offender, and 2) the court imposed consecutive sentences based on more than one factor.

We begin our analysis by noting that it is within the sound discretion of the trial court whether to impose consecutive or concurrent sentences. See State v. James, 688 S.W.2d 463, 465 (Tenn. Crim. App. 1984). Tennessee courts may order consecutive sentences in cases where it finds any of seven statutorily enumerated criteria to be applicable “by a preponderance of the evidence.” Tenn. Code Ann. § 40-35-115(b). In addition to these criteria, consecutive sentencing is also subject to the general sentencing principles that the overall sentence imposed “should be no greater than that deserved for the offense committed,” that it “should be the least severe measure necessary to achieve the purposes for which the sentence is imposed,” and that the defendant’s “potential for rehabilitation” be considered. Tenn. Code Ann. § 40-35-103(2), (4) and (5). Additionally, we are advised that “the aggregate maximum of consecutive terms must be reasonably related to the severity of the offenses involved.” Tenn. Code Ann. § 40-35-115, Sentencing Commission Comments.

In the case at hand, the trial court found two consecutive sentencing criteria applied: the Defendant was “an offender whose record of criminal activity is extensive,” and “is a dangerous offender whose behavior indicates little regard for human life, and no hesitation about committing a crime in which the risk to human life is high.” Tenn. Code Ann. § 40-35-115(b)(2) and (4). As to the Defendant’s extensive criminal history, the trial court recited at the sentencing hearing the Defendant’s criminal record, starting at age fifteen when he was adjudicated to have committed the delinquent act of burglary, a crime that would have been a felony had he been an adult, and continuing on with two felony drug convictions and two DUI convictions. The trial court concluded: “What [the Defendant] has done is gone from [a] juvenile committing offenses to an adult

⁶We note that the legislature has recently amended several provisions of the Criminal Sentencing Reform Act of 1989, said changes becoming effective June 7, 2005. However, the Defendant’s crimes in this case, as well as his sentencing, predate the effective date of these amendments. Therefore, this case is not affected by the 2005 amendments, and the statutes cited in this opinion are those that were in effect at the time the instant crimes were committed.

⁷In State v. Woods, 814 S.W.2d at 380, this Court found that a “dangerous offender,” as described in Tennessee Code Annotated section 40-35-115(b)(4), required a finding of: 1) behavior that indicated little or no regard for human life and no hesitation in committing a crime with high risk to human life; 2) the circumstances surrounding the commission of the offense were aggravated; 3) confinement for an extended period of time was necessary to protect society; and 4) the aggregate length of the sentences reasonably related to the offenses at issue. The Defendant claims that in his case the trial court was “silent as to factors one, two, and four.”

committing offenses to being on community corrections and then committing much more serious offenses.”

We conclude that the record contains sufficient evidence of the Defendant’s prior criminal history to support the court’s imposition of consecutive sentences based on an “extensive” criminal record. Tenn. Code Ann. § 40-35-115(b)(2). The Defendant’s effective forty-eight-and-a-half-year sentence is the result of his pattern of continued criminal activity, and consecutive sentencing would be warranted on this factor alone.

However, the trial court also properly found that the Defendant was a “dangerous offender.” Tenn. Code Ann. § 40-35-115(b)(4). Our supreme court has held that when relying on the “dangerous offender” factor for imposition of consecutive sentencing, a trial court must also find that “the terms imposed are reasonably related to the severity of the offenses committed and are necessary in order to protect the public from further criminal acts by the offender.” State v. Wilkerson, 905 S.W.2d 933, 938 (Tenn. 1995). In Wilkerson, the Tennessee Supreme Court clarified the two elements necessary to find a defendant a “dangerous offender” under the multiple convictions sentencing statute, and in doing so expressly stated that “[t]he decision in Woods is approved only to the extent that it applied the principles set forth in this opinion.” Id. at 938. As such, the Defendant’s exclusive reliance on State v. Woods is misplaced.

In this case, the trial court made specific findings that the resulting sentence was reasonably related to the severity of the crimes because the two victims were innocently minding their own business when they were accosted and because of the heinous manner in which the Defendant brutally attacked and repeatedly stabbed the two victims. As to the second Wilkerson factor, the trial court stated that an extended sentence was necessary to protect the public from further criminal conduct, noting that the Defendant began his criminal ways as a juvenile and has since escalated into committing far more serious crimes. Additionally, the court noted that the Defendant’s community corrections violation also demonstrated an extensive sentence is warranted, concluding “the only way to protect the public from [the Defendant’s] criminal conduct is to put him in the penitentiary.”

We conclude that the evidence contained in the record on appeal supports the trial court’s ruling. The record before us leads us to also observe that the Defendant’s crimes are becoming increasingly more dangerous and he has demonstrated an inability to abide by the conditions of alternative sentencing. Because the general public deserves protection from the Defendant, a lengthy sentence is warranted. Accordingly, we conclude the trial court properly imposed consecutive sentencing. This issue is without merit.

B. Excessive Sentence

In his final issue on appeal, the Defendant claims the trial court “improperly relied upon factors not specifically set forth in [Tenn. Code Ann. §] 40-35-114” when it enhanced the Defendant’s sentence for especially aggravated robbery above the presumptive sentence. The Defendant argues that because the trial court stated on the record that it was “troubled” by the fact that the Defendant “changed clothes after the crime, got in his car, and went to pick up his

girlfriend,” the court “erred in relying upon impermissible factors within which to rely upon the (sic) enhancing the Defendant’s sentence.”

In calculating a sentence for a Class A felony conviction, the presumptive sentence is “the midpoint of the range if there are no enhancement or mitigating factors.” Tenn. Code Ann. § 40-35-210(c). If there are enhancement, but no mitigating factors, the trial court may set the sentence at or above the midpoint but still within the range. See Tenn. Code Ann. § 40-35-210(d). A sentence involving both enhancement and mitigating factors for a Class A felony requires the court to start at the midpoint, next assign the proper weight for the enhancement factor(s), and finally apply a reduction within the range as appropriate for the mitigating factor(s). See Tenn. Code Ann. § 40-35-210(e). The sentence range for a Range I, Class A felony is “not less than fifteen (15) nor more than twenty-five (25) years.” Tenn. Code Ann. § 40-35-112(a)(1). Therefore, the presumptive sentence for a Class A felony conviction of especially aggravated robbery is the midpoint, or twenty years.

The record reflects that the trial court in this case properly complied with the sentencing principles and guidelines in its determination of the Defendant’s sentence for especially aggravated robbery. The court noted that it gave some weight to the mitigation factor that the Defendant pled guilty and showed some remorse. See Tenn. Code Ann. § 40-35-113. However, the court also enhanced the Defendant’s sentence based on finding that he had a previous history of criminal convictions and had been adjudicated to have committed a delinquent act as a juvenile that would constitute a felony if committed by an adult. Tenn. Code Ann. § 40-35-114(2) and (21). The record supports these findings, and indeed, the Defendant does not challenge enhancement based on these two factors. Rather, the Defendant argues that the trial court erred by relying on what he argues is an “impermissible” factor.

The Defendant takes issue with the following statement made by the trial court at sentencing:

These facts are very peculiar to me in not what [the Defendant] did, that’s beyond belief what he did to these two ladies, but it’s what he did afterwards; get in his car, he had a change of clothing, I believe may have only been a shirt, but he’s going to pick up his girlfriend just like nothing happened. He planned, apparently to rob these people and take the money and go out and have a good time.

The Defendant argues that this statement demonstrated that the trial court enhanced his sentence based on an “impermissible” factor. However, the Defendant fails to address the statement made by the trial court immediately following the one quoted above, wherein the court admits that the concerns he just mentioned are “not an enhancement factor that’s in [the] statute,” and that it was bound to “follow the law.” Because we find the trial court followed the statutory sentencing procedure, we conclude the trial court did not err in imposing a sentence of twenty-four years and six months for the Defendant’s especially aggravated robbery conviction. This issue is without merit.

CONCLUSION

Based on the foregoing reasoning and authorities, the judgments of the trial court as to both convictions and sentences are affirmed.

DAVID H. WELLES, JUDGE